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of condominium owners statewide.

## **CONNECTICUT GENERAL ASSEMBLY Monday , March 24, 2014**

### **TESTIMONY OF Gail A. Egan TO THE JUDICIARY COMMITTEE ON PROPOSED HOUSE BILL 5590, *"AN ACT ESTABLISHING A PILOT PROGRAM FOR THE MEDIATION OF CONDOMINIUM- RELATED DISPUTES"*.**

I currently serve as President of the Connecticut Condo Owners Coalition (CCOC). The Connecticut Condo Owners Coalition (CCOC), is an organization, comprised of a volunteer Executive & Advisory Board. We currently have approximately 1,000 members, CCOC does not assess any enrollment or membership fees, and our prime objective is to advocate for the rights of condominium owners statewide.

CCOC applauds the Judiciary Committee for drafting this bill and holding a public hearing. CCOC believes that unit owners desperately need a forum to try to resolve disputes. Ideally a state agency such as DCP would provide such a forum but financial constraints at the state level have prevented this approach from being adopted. As an alternative, CCOC initially proposed the expansion of Small Claims Court jurisdiction to allow magistrates to resolve more condo related disputes.

**CCOC SUPPORTS THIS BILL** given that it is the only approach that has sufficient support at this time.

However, CCOC respectfully recommends that the Judicial Department report back to the legislature by January 1, 2016, instead of January 1, 2017. If this approach is not working the Legislature should be made aware sooner rather than later. Statistics compiled in the fifteen-month time frame should provide sufficient information to determine whether this approach has merit. This would also allow legislators to consider other possible courses of action to assist residents of common interest communities in a more-timely manner.



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We have noted below CCOC's RECOMMENDATIONS FOR AMENDMENTS followed by a summary of HB 5590.

### **REPORT TO THE LEGISLATURE**

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**CCOC respectfully requests** that the Committee consider amending HB 5590 to shorten the reporting deadline to January 1, 2016 vs. January 1, 2017.

The majority of cases that go into mediation will involve unit owner complaints. A unit owner will pay the non-refundable \$50 and while it is hopeful Associations will participate, it is not certain since most complaints to CCOC allege intentional violations by associations and a blatant disregard of existing law.

### **WHEN MUST THE MEDIATION TAKE PLACE**

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In its present draft, the bill does not say when mediation must take place only when parties must be notified and once mediation has been filed the process for selecting a special master.

**CCOC respectfully requests** a reasonable time frame be proposed so that this forum not be used as a delay tactic that would prevent the requesting participant the ability to file a court action. Deadlines are imperative. Mutuality is important.

### **SELECTION OF THE SPECIAL MASTERS**

Attorneys who represent a lot of associations get much of their business from management companies -in a sense, the attorney is "captive". Relying on professional ethics, it would be hopeful that taking a position adverse to management will not impact this process.

Setting the criteria for an applicant wishing to serve as a special master to have engaged in the practice of condominium law for not less than seven years may be too rigid. However, CCOC will defer to the committee in its wisdom of this stipulation.

However, CCOC respectfully requests that from the attorneys who have been deemed qualified to serve that the list made available to each presiding judge designated to participate in this pilot program. Hopefully, will include attorneys who provide counsel to individual unit owners as well as condominium associations.



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If I, or members of CCOC's Executive and/or Advisory Boards, can furnish the Committee with additional information or assistance, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink, reading "Gail A. Egan", with a long horizontal flourish extending to the right.

Gail A. Egan, President  
Connecticut Condo Owners Coalition  
12 Old Towne Rd.  
Cheshire CT 06410  
Telephone: 203.272.4782  
Email: [gail-ccoc@cox.net](mailto:gail-ccoc@cox.net)



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## **SUMMARY OF HB 5590**

### **Creation of a Pilot Mediation Program**

The bill requires the Chief Court Administrator, within available appropriations, to establish a pilot program to mediate certain condominium disputes in the Hartford, New Haven and Stamford-Norwalk judicial districts. "Special masters," who are experienced condominium attorneys who will serve without compensation, would conduct the mediation.

The program applies to disputes between either two individual unit owners, or between a unit owner and the association's executive board concerning the application and interpretation of (1) an association's bylaws, rules or regulations, or (2) the applicable condominium laws. Disputes related to a foreclosure action initiated against a unit owner are not be eligible for the pilot program.

### **Role of the Special Master**

The special master must try to mediate a voluntary resolution of the dispute. If a resolution of the dispute is achieved, the special master must assist the parties to prepare a written agreement setting forth the specific terms of the agreement. The parties and the special master must sign the written agreement.

### **Mediation is Voluntary**

The program is not mandatory. Participation is voluntary.

Either party may withdraw from mediation at any time during the process after providing notice to the other party and the special master. And, the special master may terminate the mediation upon finding that further efforts would be futile.

The bill does not compel participation or penalize people or associations that decide not to participate or who withdraw.



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### **Request for Mediation**

Any unit owner or executive board member acting on the association's behalf with a dispute may file a request to participate in the pilot program at any court the Chief Court Administrator designates to participate in the pilot program.

The request must be:

1. In writing, on the form the Chief Court Administrator prescribes, which, at a minimum, must set forth the names and addresses of any unit owner or executive board member acting on the association's behalf of an and a description of the specific nature of the dispute;
2. Accompanied by a nonrefundable initiation fee of \$50; and
3. Filed at a court the Chief Court Administrator designates.

### **When Must the Mediation Take Place**

The court must notify the parties of the date, time and place for the mediation session within 90 days after receiving all filing forms and fees. The presiding judge of the court in which the request for mediation has been filed selects a special master from the list of special masters compiled by the Office of the Chief Court Administrator. Bill does not say when it must take place only when notice must go out.

### **Filing Fees**

Each party to the mediation must pay a non-refundable fee of \$250. The party requesting mediation pays a \$50 non-refundable fee when he applies and a \$200 fee if the other party accepts the offer to mediate. The other party pays the \$250 fee when it accepts the offer to mediate and files the necessary form with the court.

### **Confidentiality of Mediation Process**

The bill prohibits participants from voluntarily disclosing or, through discovery or compulsory process, being required to disclose any oral or written communication received or obtained during the course of the mediation, unless (1) each of the other participants agree in writing to such disclosure, (2) the disclosure is necessary to enforce a written agreement that resulted from the mediation, (3) the disclosure is required by statute or regulation, or by any court, after notice is provided to all participants in the mediation, or (4) the disclosure is required as a result of circumstances in which a court finds that the interest of justice outweighs the need for confidentiality, consistent with the principles of law.



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### **Data Gathering**

The presiding judge must maintain statistical data, on an annual basis, concerning the administration of the pilot program. This data must include, but is not limited to, the number of requests received to participate in the pilot program, the number of requests that resulted in a mediation session being held, and whether the mediation session resulted in resolution of the dispute.

### **Report to the Legislature**

The Chief Court Administrator must report, to the Legislature's Judiciary Committee on the pilot program data by January 15, 2017.

### **Selection of the Special Masters**

The Chief Court Administrator must prescribe the qualifications that an attorney must possess in order to serve as special master for the pilot program by September 30, 2014.

The qualifications prescribed by the Chief Court Administrator must, at a minimum, require that such attorney: (1) Be a member of the bar of this state, (2) has engaged in the practice of law for not less than ten years, and (3) has engaged in the practice of condominium law for not less than seven years.

The Office of the Chief Court Administrator must develop an application process for any attorney who volunteers to serve as special master and maintain a list of those attorneys who are qualified to serve, and make the list available to each presiding judge of the civil session of a court designated to participate in the pilot program.

### **Effective Date**

The mediation program would begin on October 1, 2014.